

Jury Instructions

Assault with Intent to Murder

Commonwealth v. Johnson

Supreme Judicial Court, April 14, 2006

Where no evidence of justification, excuse, or traditionally recognized mitigation, is introduced at a trial of a charge of assault with intent to murder, a judge need not instruct on malice.

The defendant was convicted of armed assault with intent to murder his wife. The defendant's wife had mismanaged the household finances which resulted in their home being foreclosed on and auctioned off. Upset and depressed, the defendant went to his wife's place of work and assaulted her with a knife. The defense at trial, including the defendant's testimony, was that he was depressed over his wife's bookkeeping and that he intended to humiliate, but not kill her.

Although not requested at trial, the defendant claimed that the judge should have instructed the jury that malice, defined as "absence of justification, excuse, and mitigation," is an element of the offense. Specifically, the defendant claimed that evidence of his depressed state could have constituted mitigation precluding conviction for assault with intent to murder.

On appeal, the SJC held that mental impairment is not a mitigating factor that would reduce murder to manslaughter or assault with intent to murder to assault with intent to kill. Once some credible evidence of mitigation is introduced, the Commonwealth bears the burden of proving an absence of mitigation beyond a reasonable doubt and the judge must instruct the jury accordingly. But if no such evidence is introduced as in this case, the prosecution satisfies its burden by proving specific intent to kill.